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SECOND DIVISION

[G.R. No. L-46459. January 31, 1979]

WALTER BALASABAS, *petitioner*, vs. **HON. CIPRIANO VAMENTA, JR., as Presiding Judge, Branch III, CFI of Negros Oriental; GENOVEVA GONZALES, ALICIA GONZALES, IGNACIO GONZALES, ELVIRA GONZALES; and ADELAIDA GONZALES, married to Arnulfo Umbac**, *respondents*.

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; SHALL BE DISMISSED FOR BEING MOOT AND ACADEMIC. — A petition for *certiorari* to set aside a writ of preliminary injunction ordering petitioner to restore possession of the litigated land to respondents, is rendered moot academic, the injunction having ceased to be a contentious interlocutory incident, it appearing that despite such order, respondents filed a manifestation that "they have not actually taken possession of the land in question" nor do they "intend to do so," and that "they have no objection to petitioner's taking possession of the property in question," and that "there is no more legal obstacle to petitioner's taking possession of the land in question to enable him to cultivate it during the pendency of the main case in the lower court."

R E S O L U T I O N

SANTOS, *J.*:

By this petition for *certiorari* filed on July 11, 1977, petitioner seeks to set aside the orders of respondent Judge Cipriano Vamenta, Jr. of Negros Occidental — (1) dated March 25, 1977, granting a Writ of Preliminary Mandatory Injunction, ordering herein petitioner to restore to private respondents the possession of the land in question and to maintain the *status quo*; restraining petitioner from harvesting and milling sugarcane, and from further committing acts of dispossession, upon

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respondents filing a bond in the sum of Five Thousand Pesos (₱5,000); and (2) the order of May 19, 1977, which denied herein petitioners' "Motion for Reconsideration" of the said order — which were issued in Civil Case No. 6469 for Specific Performance With Preliminary Mandatory Injunction, entitled "*Genoveva Gonzales, et al. vs. Walter Balasabas, et al.*," on the grounds that respondent Judge acted with grave abuse of discretion and there is no appeal nor any plain, speedy and adequate remedy available to petitioner (*Rollo*, pp. 2-17).

On July 21, 1977, We resolved, without giving due course to petition, to require respondents to file their comments. Private respondents filed their comment, after extension, on September 12, 1977; respondent Judge reiterated the reasons and grounds stated in his Order sought to be set aside and adopted the comments of private respondent as his own (*Rollo*, pp. 78-87).

On January 18, 1978 after pleadings have been filed — including the parties' respective memoranda — private respondents, thru counsel, manifested that on October 20, 1977, they filed a Manifestation before respondent court to the effect that in spite of the Order dated March 25, 1977 subject of the petition respondents . . . "have not actually taken possession of the land in question and do not intend to do so" . . ."that they . . . have no objection to petitioner's taking possession of the property in question"; and . . ."there is no more legal obstacle in petitioner's taking possession of the land in question to enable him to cultivate it during the pendency of the main case in the court *a quo*." (*Rollo*, pp. 101-103.)

The said Manifestation filed in the Court *a quo*, *in extenso*, follows:

xxx xxx xxx

"Plaintiffs, by counsel, respectfully manifest that although per Order of this Honorable Court dated March 25, 1977, defendants have been ordered, among others, to restore plaintiffs to the possession of the land in question the latter have no actually taken physical possession of the same and do not intend to do so, considering that they have abandoned plans of cultivating the area for sugarcane purposes in view of adverse economic conditions affecting the sugar industry.

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This manifestation is made to inform this Honorable Court and defendants that plaintiff would have no objection to defendants' taking possession of the property in question, the aforesaid Order of the Court notwithstanding." (Emphasis supplied; *Rollo*, p. 104).

Petitioner, however, insists that the issues raised in the petition ". . . regardless of the non-interest of the respondents to occupy the land in question . . ." should be resolved because private respondents may take "again another inconsistent stand between now and the time this petition is restored." (*Rollo*, p. 106; Petitioner's Memorandum With Reply to Memorandum of Respondents).

This petition should be dismissed. For with the foregoing manifestation formally filed in the Court *a quo* this petition to set aside the order of March 25, 1977 has become moot and academic. Respondent Judge, on the strength of the same, should have set aside the said order and the "Writ of Preliminary Mandatory Injunction" issued on 29 March 1977, and if he has not done so, is hereby directed to do so, and proceed with the determination of the merits of the case filed with his Court. This petition has ceased to be a contentious interlocutory incident in the main action before respondent Judge.

WHEREFORE, the Court resolved to dismiss, as it hereby DISMISSES, this petition is moot and academic.

SO ORDERED.

Fernando (Chairman), Barredo, Antonio, Aquino, and *Concepcion Jr., JJ.*, concur.